

## 58 Am. Jur. 2d Oath and Affirmation Summary

American Jurisprudence, Second Edition | May 2021 Update

### Oath and Affirmation

Marie K. Pesando, J.D.

### [Correlation Table](#)

## Summary

### Scope:

This article discusses generally the nature and function of oaths and affirmations, the capacity to take them, their administration by particular persons or entities, and their form and sufficiency.

### Federal Aspects:

Statutes authorizing certain judicial officers to administer oaths and affirmations are discussed in this article.

### Treated Elsewhere:

Acknowledgments, function, and administration of, see [Am. Jur. 2d, Acknowledgments §§ 1 et seq.](#)

Administrative and quasi-judicial bodies: authority to administer oaths with respect to, see [Am. Jur. 2d, Administrative Law § 343](#); arbitrators, see [Am. Jur. 2d, Alternative Dispute Resolution § 158](#); immigration officers, see [Am. Jur. 2d, Aliens and Citizens § 47](#)

Arrest warrant, oath, or affirmation to support, see [Am. Jur. 2d, Arrest §§ 17, 18](#)

Attachment, oaths involved in, see [Am. Jur. 2d, Attachment and Garnishment § 251](#)

Bankruptcy proceedings, oaths involved in, see [Am. Jur. 2d, Bankruptcy §§ 453, 3514 to 3517](#)

Congressional officers empowered to administer oath, see [Am. Jur. 2d, United States § 16](#)

Contempt: violation of oath by grand juror as, see [Am. Jur. 2d, Contempt § 101](#); perjury as contempt, see [Am. Jur. 2d, Contempt § 63](#)

Corporation's power to take oath, see [Am. Jur. 2d, Corporations § 1825](#); oath of inspectors of elections at corporate shareholder meetings, see [Am. Jur. 2d, Corporations § 845](#)

Depositions, oaths regarding, see [Am. Jur. 2d, Depositions and Discovery §§ 18, 80, 89, 113, 125, 127, 130, 217, 233](#)

Extradition, oath for complaints accompanying requests for international extradition, see [Am. Jur. 2d, Extradition § 50](#)

Failure of election officer to take oath not negation of result of bond election, see [Am. Jur. 2d, Public Securities and Obligations § 134](#)

Federal judges, oath of office for, see [Am. Jur. 2d, Federal Courts § 25](#)

Federal tax enforcement matters involving oaths and affirmations, see [Am. Jur. 2d, Federal Tax Enforcement §§ 2, 4](#)

Hearsay statements made under oath, see [Am. Jur. 2d, Evidence §§ 685 to 687](#)

Indictment: oath or affirmation supporting, see [Am. Jur. 2d, Indictments and Informations §§ 80 to 83](#); dismissal for failure to swear or irregularity in swearing witnesses, see [Am. Jur. 2d, Indictments and Informations § 239](#)

License applications submitted under Atomic Energy Act, oath or affirmation requirements as to, see [Am. Jur. 2d, Energy and Power Sources § 80](#)

Oaths of particular persons, officers, and public officers, see [Am. Jur. 2d, Attorney General § 42](#) (assistants, deputies, and special counsel); [Am. Jur. 2d, Attorneys at Law § 16](#); [Am. Jur. 2d, Jury §§ 191 to 197](#); [Am. Jur. 2d, Grand Jury §§ 24, 25](#); [Am. Jur. 2d, Judges §§ 10, 240](#); [Am. Jur. 2d, Clerks of Court §§ 7, 11, 71](#); [Am. Jur. 2d, Public Officers and Employees §§ 121 to 124](#); [Am. Jur. 2d, Notaries Public § 16](#)

Search or wiretapping warrant, oath, or affirmation to support, see [Am. Jur. 2d, Searches and Seizures §§ 1, 185, 188, 374, 375](#)

United States Supreme Court, oath of attorneys to practice before, see [Am. Jur. 2d, Federal Courts § 476](#)

Verification of pleadings, see [Am. Jur. 2d, Pleading §§ 839 to 849](#)

Willful and corrupt false swearing or affirming after an oath lawfully administered, in the course of a judicial or quasi-judicial proceeding, see [Am. Jur. 2d, Perjury §§ 1 et seq.](#)

Wills, oaths regarding, see [Am. Jur. 2d, Wills §§ 200, 801](#)

Zoning, sworn testimony taken at hearing before board of adjustment, appeal, or review, see [Am. Jur. 2d, Zoning § 709](#)

<b>Research References:</b>
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**Westlaw Databases**

[American Law Reports \(ALR\)](#)

[West's A.L.R. Digest \(ALRDIGEST\)](#)

[American Jurisprudence 2d \(AMJUR\)](#)

[American Jurisprudence Legal Forms 2d \(AMJUR-LF\)](#)

[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)

[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)

[United States Code Annotated \(USCA\)](#)

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## 58 Am. Jur. 2d Oath and Affirmation I A Refs.

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### Oath and Affirmation

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#### I. In General

##### A. Definitions and Distinctions

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Oath](#) 🔑 1, 4

### A.L.R. Library

A.L.R. Index, Oath and Affirmation

West's A.L.R. Digest, [Oath](#) 🔑 1, 4

### Forms

[Am. Jur. Legal Forms 2d §§ 189:2, 189:3, 189:5, 189:8](#)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation §§ 2, 4, 6, 14, 15](#)

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## 58 Am. Jur. 2d Oath and Affirmation § 1

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### Oath and Affirmation

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##### A. Definitions and Distinctions

### § 1. Oath

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  1

#### Forms

[Am. Jur. Legal Forms 2d § 189:2](#) (Oath—General form)

[Am. Jur. Legal Forms 2d § 189:5](#) (Oath of office—Of elected official)

[Am. Jur. Legal Forms 2d § 189:8](#) (Oath or affirmation of appraiser)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 2](#) (Oath or affirmation—Of witness)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 4](#) (Oath or affirmation—Of interpreter)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 6](#) (Oath or affirmation—Of juror—On voir dire)

An “oath” is commonly defined and understood as a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.<sup>1</sup> An oath is a declaration of the truth of a statement,<sup>2</sup> which may be either written or oral.<sup>3</sup> It has also been said that an oath is a matter of substance, not form, and that it is an essential component of the Fourth Amendment and legal proceedings.<sup>4</sup> It is solemn,<sup>5</sup> and formal,<sup>6</sup> manifesting an intent to be bound by the statement,<sup>7</sup> and signifying the undertaking of an obligation to speak the truth at a time when testimony may deeply affect the rights and the character of individuals.<sup>8</sup>

#### Observation:

“Verification” is a confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition, or an affidavit of the truth of the matter stated.<sup>9</sup> Verification on oath is distinguished from a mere notarization in that verification requires that the applicant swears to the truthfulness of the representations made in the application.<sup>10</sup>

In its strict sense, the term refers to an attestation that is coupled with an invocation to the Supreme Being to witness the words of the attesting party and to visit him or her with judgment if the words be false.<sup>11</sup> In its more general sense, an oath is any form of attestation by which a person signifies that he or she is bound in conscience to perform an act faithfully and truthfully<sup>12</sup> regardless of whether or not that attestation invokes the Supreme Being or is accompanied by conditional self-cursing.<sup>13</sup> In this more general sense of the word, “oath” is synonymous with “affirmation,” which does not involve a reference to God.<sup>14</sup> Thus, “oath” has been construed to include “affirmation” in cases where, by law, an affirmation may be substituted for an oath.<sup>15</sup> The word “oath” has also been construed to include “certification” and “swearing.”<sup>16</sup>

**Observation:**

The oath taken by a witness is just one of the various types of oath that exist. There is also the oath of an affiant to attest the truth of a writing and the qualifying oath *juramentum promissionis*, which is a pledge or promise taken by one chosen to perform some duty.<sup>17</sup>

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Footnotes

- <sup>1</sup> State v. Johnson, 107 Conn. App. 188, 944 A.2d 416 (2008).
- <sup>2</sup> In re Williamson, 43 B.R. 813 (Bankr. D. Utah 1984); State v. Assuntino, 180 Conn. 345, 429 A.2d 900 (1980); Paradis v. Webber Hospital, 409 A.2d 672 (Me. 1979); Spradling v. Hutchinson, 162 W. Va. 768, 253 S.E.2d 371 (1979).  
“Oath” is affirmation of the truth of statement, which renders one willfully asserting an untruth punishable for perjury. Kellner v. Christian, 197 Wis. 2d 183, 539 N.W.2d 685 (1995).
- <sup>3</sup> State v. Assuntino, 180 Conn. 345, 429 A.2d 900 (1980).
- <sup>4</sup> State v. Tye, 2001 WI 124, 248 Wis. 2d 530, 636 N.W.2d 473 (2001).
- <sup>5</sup> In re Williamson, 43 B.R. 813 (Bankr. D. Utah 1984); State v. Assuntino, 180 Conn. 345, 429 A.2d 900 (1980); Hroneck v. People, 134 Ill. 139, 24 N.E. 861 (1890); State v. Zamorsky, 159 N.J. Super. 273, 387 A.2d 1227 (App. Div. 1978), certification granted, cause remanded on other grounds, 79 N.J. 485, 401 A.2d 241 (1979); Youngstown Steel Door Co. v. Kosydar, 33 Ohio App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 (8th Dist. Cuyahoga County 1973); Kellner v. Christian, 197 Wis. 2d 183, 539 N.W.2d 685 (1995).
- <sup>6</sup> State v. Assuntino, 180 Conn. 345, 429 A.2d 900 (1980); Youngstown Steel Door Co. v. Kosydar, 33 Ohio App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 (8th Dist. Cuyahoga County 1973).
- <sup>7</sup> Kellner v. Christian, 197 Wis. 2d 183, 539 N.W.2d 685 (1995).
- <sup>8</sup> Louis Gherlone Excavating, Inc. v. McLean Const. Co., Inc., 88 Conn. App. 775, 871 A.2d 1057 (2005) (abrogated on other grounds by, Stone-Krete Const. Inc. v. Eder, 280 Conn. 672, 911 A.2d 300 (2006)).
- <sup>9</sup> Huntington County Community School Corp. v. Indiana State Bd. of Tax Com’rs, 757 N.E.2d 235, 158 Ed. Law Rep. 417 (Ind. Tax Ct. 2001); In re Petition for Writ of Certiorari as to Determination of Election on Brookings School District’s Decision to Raise Additional General Fund, 2002 SD 85, 649 N.W.2d 581 (S.D. 2002).
- <sup>10</sup> In re General Determination of Rights to Use of Water, 2008 UT 25, 182 P.3d 362 (Utah 2008).

- <sup>11</sup> In re Williamson, 43 B.R. 813 (Bankr. D. Utah 1984); Asher v. Sizemore, 261 S.W.2d 665 (Ky. 1953); Rousseau v. Democratic Parish Executive Committee for Parish of St. Martin, 164 So. 175 (La. Ct. App. 1st Cir. 1935); Atwood v. State, 146 Miss. 662, 111 So. 865, 51 A.L.R. 836 (1927); Lackey v. Mesa Petroleum Co., 90 N.M. 65, 559 P.2d 1192 (Ct. App. 1976); Youngstown Steel Door Co. v. Kosydar, 33 Ohio App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 (8th Dist. Cuyahoga County 1973).
- <sup>12</sup> Weydert Homes, Inc. v. Kammes, 395 Ill. App. 3d 512, 334 Ill. Dec. 467, 917 N.E.2d 64 (2d Dist. 2009); Asher v. Sizemore, 261 S.W.2d 665 (Ky. 1953); People v. Pribble, 72 Mich. App. 219, 249 N.W.2d 363 (1976); State v. Zamorsky, 159 N.J. Super. 273, 387 A.2d 1227 (App. Div. 1978), certification granted, cause remanded on other grounds, 79 N.J. 485, 401 A.2d 241 (1979).  
The law presumes that people will not make false statements under oath or affirmation. *State ex rel. Deblasio v. Jackson*, 227 W. Va. 206, 707 S.E.2d 33 (2011).
- <sup>13</sup> In re Williamson, 43 B.R. 813 (Bankr. D. Utah 1984); Collins v. State, 465 So. 2d 1266 (Fla. Dist. Ct. App. 2d Dist. 1985).
- <sup>14</sup> As to a discussion of the affirmation, see § 2.
- <sup>15</sup> Bram v. U.S., 168 U.S. 532, 18 S. Ct. 183, 42 L. Ed. 568 (1897); Spradling v. Hutchinson, 162 W. Va. 768, 253 S.E.2d 371 (1979).
- <sup>16</sup> Spradling v. Hutchinson, 162 W. Va. 768, 253 S.E.2d 371 (1979).  
To “swear” means to declare on oath that the facts alleged are true. *Jimenez v. Ratine*, 954 So. 2d 706 (Fla. Dist. Ct. App. 2d Dist. 2007).  
The word “swear” means in law to take oath or to give evidence or state on oath or legal equivalent, as on affirmation—as, to swear to a fact, against a party. *Louis Gherlone Excavating, Inc. v. McLean Const. Co., Inc.*, 88 Conn. App. 775, 871 A.2d 1057 (2005) (abrogated on other grounds by, *Stone-Krete Const. Inc. v. Eder*, 280 Conn. 672, 911 A.2d 300 (2006)).
- <sup>17</sup> *Miller v. Palo Alto Bd. of Sup’rs*, 248 Iowa 1132, 84 N.W.2d 38 (1957).

## 58 Am. Jur. 2d Oath and Affirmation § 2

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## § 2. Affirmation

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### West's Key Number Digest

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### Forms

[Am. Jur. Legal Forms 2d § 189:3](#) (Affirmation—General form)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 14](#) (Affirmation—General form)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 15](#) (Affirmation—Of truth of statement—By attorney)

An affirmation, like an oath, is a declaration of the truth of a statement,<sup>1</sup> which may be either written or oral.<sup>2</sup> While an oath, in its strict sense, involves the idea of calling on God to witness what is averred as truth,<sup>3</sup> an affirmation is an undertaking to tell the truth equally as solemn as the oath but does not invoke the deity.<sup>4</sup> An affirmation may usually be interchanged for an oath where there is an expression of conscientious scruples against taking an oath.<sup>5</sup> “Affirmation” has been construed to be included in the term “oath” where, by law, an affirmation may be substituted for an oath.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [State v. Assuntino](#), 180 Conn. 345, 429 A.2d 900 (1980); [Spradling v. Hutchinson](#), 162 W. Va. 768, 253 S.E.2d 371 (1979).

<sup>2</sup> [State v. Assuntino](#), 180 Conn. 345, 429 A.2d 900 (1980).

<sup>3</sup> § 1.

<sup>4</sup> [State v. Zamorsky](#), 159 N.J. Super. 273, 387 A.2d 1227 (App. Div. 1978), certification granted, cause remanded on



## § 2. Affirmation, 58 Am. Jur. 2d Oath and Affirmation § 2

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other grounds, 79 N.J. 485, 401 A.2d 241 (1979); *Youngstown Steel Door Co. v. Kosydar*, 33 Ohio App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 (8th Dist. Cuyahoga County 1973).

<sup>5</sup> *Oliver v. State Tax Com'n of Missouri*, 37 S.W.3d 243 (Mo. 2001); *Citizens for Incorporation, Inc. v. Board of County Com'rs of County of Bernalillo*, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993).

Notaries public and other officers authorized to administer oaths ought to reasonably accommodate an affiant's refusal, on religious grounds, to swear an "oath" or "affirmation" in connection with his affidavit. *Scott v. State*, 80 S.W.3d 184 (Tex. App. Waco 2002), petition for discretionary review refused, (2 pets.)(Oct. 2, 2002).

<sup>6</sup> § 1.

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## 58 Am. Jur. 2d Oath and Affirmation § 3

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### Oath and Affirmation

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#### I. In General

##### A. Definitions and Distinctions

### § 3. Affidavit

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#### West's Key Number Digest

West's Key Number Digest, [Oath](#) 4

An “oath,” which has been defined as any form of attestation by which a person signifies that he or she is bound in conscience to perform an act faithfully and truthfully,<sup>1</sup> is distinguishable from an affidavit, which is a voluntary written statement of fact under oath sworn to or affirmed by the person making it before some person who has authority under the law to administer oaths and officially certified by the officer under his or her seal of office.<sup>2</sup> The difference between an affidavit and an oath is that an affidavit consists of a statement of fact, which is sworn to as the truth, while an oath is a pledge.<sup>3</sup>

Where an affidavit is required in support of or in opposition to a motion, a statement made under oath may be considered by the court as the equivalent of an affidavit.<sup>4</sup>

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#### Footnotes

<sup>1</sup> § 1.

<sup>2</sup> Am. Jur. 2d, Affidavits § 1.

<sup>3</sup> June v. School Dist. No. 11, Southfield Tp., 283 Mich. 533, 278 N.W. 676, 116 A.L.R. 581 (1938); State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (Ct. App. 2004); Vaughn v. State, 146 Tex. Crim. 586, 177 S.W.2d 59 (1943).

<sup>4</sup> Small v. Frank, 153 L.R.R.M. (BNA) 2480, 1996 WL 426539 (E.D. Pa. 1996).



## 58 Am. Jur. 2d Oath and Affirmation § 4

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### Oath and Affirmation

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##### A. Definitions and Distinctions

### § 4. Acknowledgment

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#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  4

There is a vital distinction between an oath and an acknowledgment. As a general rule, an acknowledgment constitutes a formal statement of the person executing an instrument that he or she executed the instrument as a free deed and act;<sup>1</sup> an oath, on the other hand, signifies the undertaking of an obligation to speak the truth at a time when testimony may deeply affect the rights and the character of individuals.<sup>2</sup> Consequently, the protection afforded by an application sworn to provides greater protection than an application merely acknowledged, for the oath imposes upon the applicant greater responsibility.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [H. A. M. S. Co. v. Electrical Contractors of Alaska, Inc.](#), 563 P.2d 258 (Alaska 1977), order supplemented, 566 P.2d 1012 (Alaska 1977) (an acknowledgment is a method of authenticating an instrument by showing that it was the act of the person executing it as distinguished from a sworn statement of the truth of the facts stated in the instrument); [State v. Grant](#), 176 Conn. 17, 404 A.2d 873 (1978).  
As to the nature of acknowledgments, generally, see [Am. Jur. 2d, Acknowledgments §§ 1, 2](#).

<sup>2</sup> [§ 1](#).

<sup>3</sup> [State v. Grant](#), 176 Conn. 17, 404 A.2d 873 (1978).  
Signed statement containing notice of penalty for making false statement is the equivalent of statement made under oath. [People v. McCulloch](#), 226 A.D.2d 848, 640 N.Y.S.2d 914 (3d Dep't 1996).

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**B. Functions of Oath or Affirmation**

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## 58 Am. Jur. 2d Oath and Affirmation § 5

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### Oath and Affirmation

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#### B. Functions of Oath or Affirmation

### § 5. To bind conscience

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#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  1

The requirement of an oath is not a mere technicality.<sup>1</sup> Its administration, in legal form, is regarded not only as the highest test of truth but also as an instrument appropriated by the law for the ascertainment of the truth in judicial investigations.<sup>2</sup> The purpose of an oath or affirmation is to impress upon the swearing individual an appropriate sense of obligation to tell the truth<sup>3</sup> and to ensure that the affiant consciously recognizes his or her legal obligation to tell the truth.<sup>4</sup> Thus, the function of an oath is to bind the conscience of the speaker<sup>5</sup> at a time when what he or she says will deeply affect the rights of an individual.<sup>6</sup>

The affirmation has the same purpose: to bind the conscience.<sup>7</sup> The only difference is that the affirmation does not impress the person who takes the oath with a sense of *religious* obligation.<sup>8</sup>

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#### Footnotes

<sup>1</sup> [Paradis v. Webber Hospital](#), 409 A.2d 672 (Me. 1979).

<sup>2</sup> [Mattox v. Bays](#), 35 Ky. 461, 5 Dana 461, 1837 WL 2105 (1837).

<sup>3</sup> [State v. Robinson](#), 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999); [State v. Tye](#), 2001 WI 124, 248 Wis. 2d 530, 636 N.W.2d 473 (2001).

<sup>4</sup> [In re State](#), 144 N.H. 85, 736 A.2d 1242 (1999); [State v. Sands](#), 123 N.H. 570, 467 A.2d 202, 37 A.L.R.4th 904 (1983).

<sup>5</sup> [People v. Caba](#), 66 A.D.3d 1121, 887 N.Y.S.2d 709 (3d Dep't 2009).

<sup>6</sup> [Brummer v. Stokebrand](#), 1999 SD 137, 601 N.W.2d 619 (S.D. 1999).

§ 5. To bind conscience, 58 Am. Jur. 2d Oath and Affirmation § 5

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<sup>7</sup> [State v. Zamorsky](#), 159 N.J. Super. 273, 387 A.2d 1227 (App. Div. 1978), certification granted, cause remanded on other grounds, [79 N.J. 485](#), 401 A.2d 241 (1979).

<sup>8</sup> [§ 2](#).

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## 58 Am. Jur. 2d Oath and Affirmation § 6

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### Oath and Affirmation

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#### B. Functions of Oath or Affirmation

### § 6. To permit prosecution for perjury

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The administering of an oath has another purpose besides that of binding a person's conscience:<sup>1</sup> it is to make the person who takes an oath or affirmation amenable to prosecution if perjured testimony is given.<sup>2</sup> The key to a valid oath is that perjury will lie for its falsity, and it is essential to the offense of perjury that the statement considered perjurious be given under an oath actually administered.<sup>3</sup> However, an oath not authorized by law is extrajudicial and of no binding force.<sup>4</sup>

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#### Footnotes

<sup>1</sup> § 5.

<sup>2</sup> *In re Williamson*, 43 B.R. 813 (Bankr. D. Utah 1984); *Collins v. State*, 465 So. 2d 1266 (Fla. Dist. Ct. App. 2d Dist. 1985); *Paradis v. Webber Hospital*, 409 A.2d 672 (Me. 1979); *Citizens for Incorporation, Inc. v. Board of County Com'rs of County of Bernalillo*, 115 N.M. 710, 858 P.2d 86 (Ct. App. 1993); *People v. Penaflorida*, 34 Misc. 3d 420, 932 N.Y.S.2d 682 (N.Y. City Civ. Ct. 2011); *State ex rel. Ross v. King*, 70 Ohio L. Abs. 554, 129 N.E.2d 103 (C.P. 1955); *Brummer v. Stokebrand*, 1999 SD 137, 601 N.W.2d 619 (S.D. 1999); *Kellner v. Christian*, 197 Wis. 2d 183, 539 N.W.2d 685 (1995).

Generally, a statement is properly sworn if the person giving the statement would be subject to prosecution for perjury if the statement were fabricated. *State v. Knight*, 128 N.M. 591, 2000-NMCA-016, 995 P.2d 1033 (Ct. App. 2000).

As to the crime of perjury, see *Am. Jur. 2d, Perjury* §§ 1 et seq.

<sup>3</sup> *Collins v. State*, 465 So. 2d 1266 (Fla. Dist. Ct. App. 2d Dist. 1985).

As to the elements essential to a valid oath, see §§ 16 to 22.

<sup>4</sup> *State v. Bowman*, 90 Me. 363, 38 A. 331 (1897).

As to the fact that the form in which an oath is administered does not affect its sufficiency for the purpose of basing thereon a charge of perjury, see § 20.



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## 58 Am. Jur. 2d Oath and Affirmation II Refs.

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### Oath and Affirmation

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### II. Capacity to Take Oath or Affirmation

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## 58 Am. Jur. 2d Oath and Affirmation § 7

American Jurisprudence, Second Edition | May 2021 Update

### Oath and Affirmation

Marie K. Pesando, J.D.

## II. Capacity to Take Oath or Affirmation

### § 7. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  1

The competency of a person to take a prescribed oath is a question for the court, and the burden of proof rests upon the objector.<sup>1</sup> A witness must be sensible to the obligation of an oath before he or she can be permitted to testify.<sup>2</sup> Thus, an infant who does not understand the obligation of an oath may be excluded from testifying in court.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [Birmingham Ry., Light & Power Co. v. Jung](#), 161 Ala. 461, 49 So. 434 (1909); [State v. Walton](#), 72 N.J. Super. 527, 179 A.2d 78 (County Ct. 1962).

<sup>2</sup> [Am. Jur. 2d, Witnesses § 161](#).

<sup>3</sup> [Am. Jur. 2d, Evidence § 873](#).

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## 58 Am. Jur. 2d Oath and Affirmation § 8

American Jurisprudence, Second Edition | May 2021 Update

### Oath and Affirmation

Marie K. Pesando, J.D.

#### II. Capacity to Take Oath or Affirmation

### § 8. Necessity of religious belief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  1

Where an “oath” is strictly defined as an undertaking to tell the truth coupled with an appeal to God,<sup>1</sup> it becomes readily apparent that one cannot take an oath without believing in God.<sup>2</sup> However, it is not an abuse of discretion to admit the testimony of a witness who swore an oath to God even though the witness was an atheist where the witness states that he or she took the oath seriously, that he or she respected the oath, and that he or she was telling the truth to the best of his or her ability.<sup>3</sup> Moreover, an oath required by statute may be nonetheless valid without having been made expressly to God where the oath meets the statutory purpose of ensuring that the affiant consciously recognizes his or her obligation to tell the truth despite the failure of the administering judge to use the words, “So help you God.”<sup>4</sup> Finally, for those who are unable to take the oath because of a lack of religious belief, the affirmation is available in most jurisdictions as an alternative.<sup>5</sup>

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#### Footnotes

<sup>1</sup> § 1.

<sup>2</sup> [Hroneck v. People](#), 134 Ill. 139, 24 N.E. 861 (1890) (holding that any person who believes in God is capable of taking a binding oath, whatever his or her creed).

<sup>3</sup> [U.S. v. Saget](#), 991 F.2d 702, 37 Fed. R. Evid. Serv. 643 (11th Cir. 1993).

<sup>4</sup> [State v. Sands](#), 123 N.H. 570, 467 A.2d 202, 37 A.L.R.4th 904 (1983).

<sup>5</sup> § 2.



## 58 Am. Jur. 2d Oath and Affirmation § 9

American Jurisprudence, Second Edition | May 2021 Update

### Oath and Affirmation

Marie K. Pesando, J.D.

#### II. Capacity to Take Oath or Affirmation

### § 9. Taking of oath by representative

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  1

The taking of an oath is a personal matter, and it cannot be taken or subscribed in a representative capacity.<sup>1</sup> It is an act that may not be delegated to an agent, for by its very definition, an “oath” must be administered personally.<sup>2</sup> A corporation, being a purely artificial body separate and distinct from its members, cannot take an oath although usually, when an oath or affidavit is required, a duly authorized agent or officer of the corporation may make the oath or affidavit in its behalf.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [Bourgeois v. Sazdoff](#), 209 So. 2d 320 (La. Ct. App. 4th Cir. 1968).

<sup>2</sup> [State v. Tedesco](#), 175 Conn. 279, 397 A.2d 1352 (1978).

<sup>3</sup> [Am. Jur. 2d, Corporations](#) § 1825.

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## 58 Am. Jur. 2d Oath and Affirmation III A Refs.

American Jurisprudence, Second Edition | May 2021 Update

**Oath and Affirmation**

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### III. Administration by Particular Persons or Entities

#### A. Authority to Administer

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Oath](#) 🔑2

### A.L.R. Library

A.L.R. Index, Oath and Affirmation

West's A.L.R. Digest, Oath 🔑2

### Trial Strategy

[Proof of Matters by Judicial Notice](#), 60 Am. Jur. Proof of Facts 3d 175

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## 58 Am. Jur. 2d Oath and Affirmation § 10

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### Oath and Affirmation

Marie K. Pesando, J.D.

### III. Administration by Particular Persons or Entities

#### A. Authority to Administer

## § 10. Courts; clerks of court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  2

A judge may administer the oath or direct anyone in his or her presence, in open court, to administer it, and the oath will be valid.<sup>1</sup> Inasmuch as an oath derives its sanction and validity from the circumstance that it is duly administered in open court with the approval and under the control of the judge presiding, it is not necessary that the person who thus administers it be a legally appointed officer of the court.<sup>2</sup> A federal judge or justice is authorized by statute to administer oaths and affirmations<sup>3</sup> as are United States Magistrates.<sup>4</sup>

The authority of clerks of state and local courts to administer oaths is purely a creature of statute,<sup>5</sup> and the authority of clerks of federal courts to administer oaths and affirmations is also granted by statute.<sup>6</sup>

### Caution:

It has been stated that no authority to administer oaths should be construed without statutory authorization.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:



Courts are not rigid with the certification requirement of the rule on oaths and affirmations; provided that the oath was duly given, authentication of the oathgiver's authority may be secured later and given nunc pro tunc effect. [N.Y. CPLR § 2309\(c\)](#). [Forman v. Whitney Center for Permanent Cosmetics Corp.](#), 172 A.D.3d 412, 100 N.Y.S.3d 226 (1st Dep't 2019).

**[END OF SUPPLEMENT]**

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**Footnotes**

- <sup>1</sup> [Crockett v. Cassels](#), 95 Fla. 851, 116 So. 865 (1928); [Bush v. Com.](#), 198 Ky. 226, 248 S.W. 522 (1923); [Rousseau v. Democratic Parish Executive Committee for Parish of St. Martin](#), 164 So. 175 (La. Ct. App. 1st Cir. 1935); [State v. Townley](#), 67 Ohio St. 21, 65 N.E. 149 (1902).
- <sup>2</sup> [Bush v. Com.](#), 198 Ky. 226, 248 S.W. 522 (1923); [State v. Townley](#), 67 Ohio St. 21, 65 N.E. 149 (1902).
- <sup>3</sup> [28 U.S.C.A. § 459](#).
- <sup>4</sup> [28 U.S.C.A. § 636\(a\)\(2\)](#).
- <sup>5</sup> [Mendez v. Com.](#), 220 Va. 97, 255 S.E.2d 533 (1979).
- <sup>6</sup> [28 U.S.C.A. § 953](#).
- <sup>7</sup> [In re Kaufman](#), 183 Misc. 2d 581, 706 N.Y.S.2d 589 (Fam. Ct. 2000).

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## 58 Am. Jur. 2d Oath and Affirmation § 11

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### Oath and Affirmation

Marie K. Pesando, J.D.


### III. Administration by Particular Persons or Entities

#### A. Authority to Administer

## § 11. Interested persons

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  2

It is well settled, even in the absence of statute, that an oath cannot be legally administered by one who is an interested party in the proceeding.<sup>1</sup> Whether an oath administered by an interested person is void or voidable is a question not answered by the courts with uniformity, but it would seem to be the more generally accepted rule that where there is no imputation or charge of improper conduct or bad faith or undue advantage, the mere fact that the oath was taken before an interested officer will not vitiate the ceremony or render it void if otherwise it is free from objection or criticism.<sup>2</sup> At the most, it will be considered only voidable, and unless timely and proper objection is made to such an oath, the defect will be deemed to have been waived.<sup>3</sup>

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### Footnotes

<sup>1</sup> Ott v. Stipe Law Firm, 169 F.R.D. 380 (E.D. Okla. 1996); Fair v. Citizens' State Bank of Sterling, 70 Kan. 612, 79 P. 144 (1905); Asher v. Sizemore, 261 S.W.2d 665 (Ky. 1953); Rousseau v. Democratic Parish Executive Committee for Parish of St. Martin, 164 So. 175 (La. Ct. App. 1st Cir. 1935).

<sup>2</sup> Fair v. Citizens' State Bank of Sterling, 70 Kan. 612, 79 P. 144 (1905); Hass v. Neth, 265 Neb. 321, 657 N.W.2d 11 (2003).

<sup>3</sup> Horkey v. Kendall, 53 Neb. 522, 73 N.W. 953 (1898).

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## 58 Am. Jur. 2d Oath and Affirmation § 12

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### Oath and Affirmation

Marie K. Pesando, J.D.

### III. Administration by Particular Persons or Entities

#### A. Authority to Administer

## § 12. Interested persons—Attorneys

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  2

### A.L.R. Library

[Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 A.L.R.3d 483](#)

In some instances, courts have held attorneys disqualified to take oaths from their clients in connection with attachment, garnishment, and other provisional remedies<sup>1</sup> although there is also contrary authority.<sup>2</sup> Courts have also found attorneys disqualified to administer oaths to their clients with respect to depositions and other documentary evidence<sup>3</sup> and with respect to constructive service or other acquisition of jurisdiction.<sup>4</sup> In regard to oaths taken by attorneys from their clients in connection with pleadings, motions, and miscellaneous papers and proceedings, some courts have held attorneys qualified to take an oath,<sup>5</sup> and some have held them disqualified.<sup>6</sup>

The courts that follow the rule that an attorney is disqualified from taking an oath from a client have tended to confine this rule within narrow limits. Thus, courts have held that an attorney was qualified to take an oath from the client where the oath was administered before any legal proceeding commenced,<sup>7</sup> where the attorney-client relationship was established after the disputed oath was taken by the attorney,<sup>8</sup> where the attorney-client relationship terminated before trial,<sup>9</sup> or where the attorney did not participate in the trial.<sup>10</sup>

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### Footnotes

<sup>1</sup> [Rorick v. Devon Syndicate](#), 307 U.S. 299, 59 S. Ct. 877, 83 L. Ed. 1303 (1939) (recognizing rule under Ohio law); [Ramsay Motor Co. v. Wilson](#), 47 Wyo. 54, 30 P.2d 482, 91 A.L.R. 908 (1934).

- <sup>2</sup> Oliphant v. Buie, 134 S.W.2d 751 (Tex. Civ. App. Waco 1939), writ dismissed, judgment correct.
- <sup>3</sup> Wuerth v. Wuerth, 264 Mich. 640, 250 N.W. 520 (1933); Clegg v. Gulf, C. & S.F. Ry. Co., 104 Tex. 280, 137 S.W. 109 (1911).
- <sup>4</sup> Beck v. Beck, 45 Ohio App. 507, 15 Ohio L. Abs. 326, 187 N.E. 366 (5th Dist. Coshocton County 1933).
- <sup>5</sup> Application of Martin, 76 Idaho 179, 279 P.2d 873, 53 A.L.R.2d 582 (1955); Hueston v. Preferred Accident Ins. Co., 161 Iowa 521, 143 N.W. 566 (1913); Rose v. Asam, 240 Mich. 151, 215 N.W. 400 (1927); State ex rel. Taubman v. Davis, 199 Mo. App. 439, 203 S.W. 654 (1918); Frazier, Inc. v. 20th Century Builders, Inc., 188 Neb. 618, 198 N.W.2d 478 (1972).
- <sup>6</sup> Hall's Safe Co. v. Herring-Hall-Marvin Safe Co., 31 App. D.C. 498, 1908 WL 27813 (App. D.C. 1908); Warner v. Warner, 11 Kan. 121, 1873 WL 626 (1873).
- <sup>7</sup> Petition of Jackson, 18 F.2d 462 (C.C.A. 6th Cir. 1927).
- <sup>8</sup> Park v. Zellars, 139 Ga. 585, 77 S.E. 922 (1913).
- <sup>9</sup> Zilz v. Wilcox, 190 Mich. 486, 157 N.W. 77 (1916).
- <sup>10</sup> Belinder v. Cupp, 156 Kan. 729, 137 P.2d 139 (1943).

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## 58 Am. Jur. 2d Oath and Affirmation § 13

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### Oath and Affirmation

Marie K. Pesando, J.D.

### III. Administration by Particular Persons or Entities

#### A. Authority to Administer

## § 13. Local officials' authority under federal law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  2

The oath of office of a federal official may be administered by an individual authorized by local law to administer oaths in the state, district, or territory or possession of the United States where the oath is administered.<sup>1</sup>

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### Footnotes

<sup>1</sup> [5 U.S.C.A. § 2903](#).

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## 58 Am. Jur. 2d Oath and Affirmation § 14

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### Oath and Affirmation

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### III. Administration by Particular Persons or Entities

#### A. Authority to Administer

## § 14. Judicial notice of authority of officers within jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  2

### Trial Strategy

[Proof of Matters by Judicial Notice, 60 Am. Jur. Proof of Facts 3d 175](#)

When the question of the authority of an officer to administer oaths arises, the courts will take judicial notice of the officers and their powers within the jurisdiction of the court.<sup>1</sup>

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### Footnotes

<sup>1</sup> [Hertig v. People, 159 Ill. 237, 42 N.E. 879 \(1896\).](#)

## 58 Am. Jur. 2d Oath and Affirmation III B Refs.

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### Oath and Affirmation

Marie K. Pesando, J.D.

### III. Administration by Particular Persons or Entities

#### B. Duty to Administer

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Oath](#) 🔑 1, 3

### A.L.R. Library

A.L.R. Index, Oath and Affirmation

West's A.L.R. Digest, [Oath](#) 🔑 1, 3

### Forms

[Am. Jur. Legal Forms 2d § 189:12](#)

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## 58 Am. Jur. 2d Oath and Affirmation § 15

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### Oath and Affirmation

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### III. Administration by Particular Persons or Entities

#### B. Duty to Administer

## § 15. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  1, 3

### Forms

[Am. Jur. Legal Forms 2d § 189:12](#) (Certificate that oath taken or affirmation made)

The administration of an oath is a ministerial act<sup>1</sup> and one that an officer may have a duty to perform.<sup>2</sup> Indeed, it has sometimes been made an offense for an officer to refuse willfully to administer an oath. In such a case, the intention of the officer and the fact that the officer believed that he or she was not bound to administer the oath, and acted in good faith in refusing to do so, are no defense. Ignorance of the law is no excuse, and an honest conviction that one has a right to do what the law declares to be illegal will not make the act innocent.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Fair v. Citizens' State Bank of Sterling](#), 70 Kan. 612, 79 P. 144 (1905).

<sup>2</sup> [Matter of Kappelman](#), 114 Idaho 136, 754 P.2d 449 (Ct. App. 1988) (referring to the administration of oaths as one of the duties of an officer); [People v. Crosson](#), 30 Ill. App. 2d 57, 173 N.E.2d 552 (1st Dist. 1961); [Smallwood v. Soutter](#), 5 Ill. App. 2d 303, 125 N.E.2d 679 (1st Dist. 1955).

<sup>3</sup> [People v. Brooks](#), 1 Denio 457, 1845 WL 4407 (N.Y. Sup 1845).



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## 58 Am. Jur. 2d Oath and Affirmation IV A Refs.

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### Oath and Affirmation

Marie K. Pesando, J.D.

#### IV. Form and Sufficiency

##### A. Requirements for Valid Oath or Affirmation

[Topic Summary](#) | [Correlation Table](#)


### Research References

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

#### A.L.R. Library

A.L.R. Index, Oath and Affirmation

West's A.L.R. Digest, [Oath](#)  3, 5

#### Forms

[Am. Jur. Legal Forms 2d § 189:12](#)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation §§ 16 to 18](#)

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## 58 Am. Jur. 2d Oath and Affirmation § 16

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### Oath and Affirmation

Marie K. Pesando, J.D.

#### IV. Form and Sufficiency

##### A. Requirements for Valid Oath or Affirmation

### § 16. Generally; unequivocal act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

#### A.L.R. Library

[Sufficiency, under Rules 603 and 604 of Federal Rules of Evidence, of wording of oath, affirmation, or other declaration made by witness, or proposed witness or by court, relating to truthfulness of witness' testimony, 127 A.L.R. Fed. 207](#)

#### Forms

[Am. Jur. Legal Forms 2d §§ 189:12](#) (Certificate that oath taken or affirmation made)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 16](#) (Certificate that oath was taken or affirmation was made)

While a large liberty is given to the form of an oath, some form remains essential. Something must be present to distinguish between the oath and the bare assertion:<sup>1</sup> an act must be done and clothed in such form as to characterize and evidence it.<sup>2</sup> Thus, to make a valid oath, there must be, in some form, an unequivocal and present act by which the affiant consciously takes upon him- or herself the obligation of an oath.<sup>3</sup> There must be some overt act that shows that there was an intention to take an oath or affirmation on the one hand and an intention to administer it on the other; mere intention, not accompanied by an unambiguous act, is insufficient.<sup>4</sup> Stated otherwise, in order to have a valid statement under oath, the attention of the person to be sworn must be called to the fact that his or her statement is not a mere assertion, but must be sworn to, and he or she must do some corporal act in recognition of this.<sup>5</sup> Moreover, a good faith belief in an obligation to tell the truth does not constitute as an oath a statement that is actually a mere unattested assertion of truth.<sup>6</sup>

Footnotes

- <sup>1</sup> [Collins v. State](#), 465 So. 2d 1266 (Fla. Dist. Ct. App. 2d Dist. 1985) (a mere assertion of truth, without an attestation to that effect by an unequivocal act for which a prosecution for perjury will lie, is not sufficient as an oath).
- <sup>2</sup> [Dalbey Bros. Lumber Co. v. Crispin](#), 234 Iowa 151, 12 N.W.2d 277 (1943) (noting that only by some unequivocal form could the sworn be distinguished from the unsworn averment, and the sanctions of religion add their solemn and binding force to the act); [Atwood v. State](#), 146 Miss. 662, 111 So. 865, 51 A.L.R. 836 (1927).  
A petition for reassessment was not verified under oath within the meaning of a statute where it failed to appear that the declarant did any public act indicative of his solemn purpose to make a petition under oath and where it appeared only that the petition included a statement that the declarant stated under penalty of perjury that he was an officer of petitioner, that he was authorized to file the petition, and that the statements made were true to the best of his knowledge and belief. [Youngstown Steel Door Co. v. Kosydar](#), 33 Ohio App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 (8th Dist. Cuyahoga County 1973).
- <sup>3</sup> [U.S. v. Yoshida](#), 727 F.2d 822 (9th Cir. 1983); [Crain v. State](#), 914 So. 2d 1015 (Fla. Dist. Ct. App. 5th Dist. 2005); [Dalbey Bros. Lumber Co. v. Crispin](#), 234 Iowa 151, 12 N.W.2d 277 (1943); [Kellner v. Christian](#), 197 Wis. 2d 183, 539 N.W.2d 685 (1995).  
Translator's swearing that she translated the tape in issue from Spanish to English to the best of her ability was sufficient oath; there is no constitutional or statutorily required form of oath, and oath administered would have impressed upon translator the importance of truthful and accurate translation. [U.S. v. Armijo](#), 5 F.3d 1229, 38 Fed. R. Evid. Serv. 1264, 127 A.L.R. Fed. 661 (9th Cir. 1993).  
As to the requirement that this act take place in the presence of an authorized official, see § 17.
- <sup>4</sup> [Board of Elections of Taylor County v. Board of Educ. of Campbellsville Independent School Dist.](#), 635 S.W.2d 324, 5 Ed. Law Rep. 669 (Ky. Ct. App. 1982).  
To constitute a valid oath, there must be some outward formality, some manifestation of intent to place affiant under penalty and obligation of oath, and some evidence that affiant was conscious that he was taking oath. [People v. Penafloida](#), 34 Misc. 3d 420, 932 N.Y.S.2d 682 (N.Y. City Civ. Ct. 2011).  
The essential elements of an oath are a solemn declaration, the manifested intent to be bound thereby, the signature of the declarant, and an authorized acknowledgment. [In re Williamson](#), 43 B.R. 813 (Bankr. D. Utah 1984).  
The essential requirement of an oath is that the party goes through some declaration or formality that indicates that the person consciously affirms the truth of the testimony he or she gives. [State v. Healy](#), 521 N.W.2d 47 (Minn. Ct. App. 1994).
- <sup>5</sup> [In re Rice](#), 35 Ill. App. 2d 79, 181 N.E.2d 742 (4th Dist. 1962); [Atwood v. State](#), 146 Miss. 662, 111 So. 865, 51 A.L.R. 836 (1927).  
Claimant and his parents failed to comply with requirements of statute requiring written notice of claim to be "sworn to" by claimant before claimant can bring action against state employee, where claimant and his parent signed notice of claim in front of notary public, without making formal oath or affirmation as to truthfulness of claim. [Kellner v. Christian](#), 197 Wis. 2d 183, 539 N.W.2d 685 (1995).
- <sup>6</sup> [Collins v. State](#), 465 So. 2d 1266 (Fla. Dist. Ct. App. 2d Dist. 1985) (holding that an officer's good faith in failing to take an oath before signing an affidavit for a search warrant, believing that his obligation to tell the truth was a sufficient oath, would not prevent the operation of the exclusionary rule).

## 58 Am. Jur. 2d Oath and Affirmation § 17

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### Oath and Affirmation

Marie K. Pesando, J.D.

#### IV. Form and Sufficiency

##### A. Requirements for Valid Oath or Affirmation

## § 17. Presence of authorized official

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

### Forms

[Am. Jur. Legal Forms 2d § 189:12](#) (Certificate that oath taken or affirmation made)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 17](#) (Certificate of authentication—By county clerk—Oath or affirmation taken by notary in foreign state for use within state)

[Am. Jur. Pleading and Practice Forms, Oath and Affirmation § 18](#) (Certificate of authentication—By clerk of court—Oath or affirmation taken without the state to be used within the state)

To make a valid oath, the declarant must take upon him- or herself the obligations of an oath in the presence of an officer authorized to administer it.<sup>1</sup>

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#### Footnotes

<sup>1</sup> [U.S. v. Yoshida](#), 727 F.2d 822 (9th Cir. 1983); [Collins v. State](#), 465 So. 2d 1266 (Fla. Dist. Ct. App. 2d Dist. 1985); [Youngker v. State](#), 215 So. 2d 318 (Fla. Dist. Ct. App. 4th Dist. 1968); [Dalbey Bros. Lumber Co. v. Crispin](#), 234 Iowa 151, 12 N.W.2d 277 (1943).

Statute's requirement that notice of medical malpractice claim be "under oath" meant that the declarant must verify the truth of the allegations before an authorized official. [Paradis v. Webber Hospital](#), 409 A.2d 672 (Me. 1979).

A petition for reassessment was not verified under oath within the meaning of a statute where the petition did not appear to be sworn to before an authorized official. Although the court did not decide whether it is always necessary that an oath be administered by someone legally empowered to take oaths, it held that it is at least necessary that someone be called upon to bear witness to the fact of the declaration. [Youngstown Steel Door Co. v. Kosydar](#), 33 Ohio

[App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 \(8th Dist. Cuyahoga County 1973\).](#)

For a discussion of the requirement that there be some unequivocal act whereby the declarant takes upon him- or herself the obligations of an oath, see [§ 16](#).

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## 58 Am. Jur. 2d Oath and Affirmation § 18

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### Oath and Affirmation

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#### IV. Form and Sufficiency

##### A. Requirements for Valid Oath or Affirmation

### § 18. Presence of authorized official—Validity of oath by telephone

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#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

Although depositions may be taken by telephone,<sup>1</sup> or may even be videotaped,<sup>2</sup> the law requires the person taking an oath to be in the personal presence of the officer administering it.<sup>3</sup> Oaths cannot be taken or administered over the telephone. Such a method of administering oaths has been held to be entirely unauthorized and illegal.<sup>4</sup> Thus, it has been remarked that in order to make an affidavit, there must be present the officer, the affiant, and the paper, and there must be something done that amounts to the administration of an oath. There must be some solemnity, not mere telephone talk. Long-distance swearing is not permissible. Telephonic affidavits are unknown to the law.<sup>5</sup> The law requires the affiant to be in the personal presence of the officer administering the oath, not to the end that the officer may know that this is the person that he or she represents him- or herself to be, for it is not required that the affiant be identified, introduced, or personally known to the officer, but to the end that he or she be certainly identified as the person who actually took the oath.<sup>6</sup>

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#### Footnotes

- <sup>1</sup> Am. Jur. 2d, Depositions and Discovery § 99.
- <sup>2</sup> Am. Jur. 2d, Depositions and Discovery § 98.
- <sup>3</sup> Sullivan v. First Nat. Bank, 37 Tex. Civ. App. 228, 83 S.W. 421 (1904).
- <sup>4</sup> In re Napolis, 169 A.D. 469, 155 N.Y.S. 416 (1st Dep't 1915).
- <sup>5</sup> Carnes v. Carnes, 138 Ga. 1, 74 S.E. 785 (1912).
- <sup>6</sup> Sullivan v. First Nat. Bank, 37 Tex. Civ. App. 228, 83 S.W. 421 (1904).

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## 58 Am. Jur. 2d Oath and Affirmation § 19

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### Oath and Affirmation

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#### IV. Form and Sufficiency

##### A. Requirements for Valid Oath or Affirmation

### § 19. Administration within official's territorial jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

For an oath to be valid and binding, it must not only be administered by a person duly authorized to administer the particular oath, but it must be administered within such person's territorial jurisdiction.<sup>1</sup> However, when an oath is administered by a public officer, it will be presumed that the officer administered the oath in the county within which he or she was authorized to administer oaths, for the presumption is that the officer has done his or her duty.<sup>2</sup> If an oath is not required to be administered in a particular place within the officer's jurisdiction, as in open court, there is no reason why an oath may not be taken before the officer at any place where he or she happens to be at the time.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [In re State ex rel. Wootan](#), 313 So. 2d 621 (La. Ct. App. 4th Cir. 1975), writ denied, 318 So. 2d 47 (La. 1975) (noting that the power of a notary to administer oaths in Louisiana is limited by statute to the parish where the notary is commissioned); [Andres v. Judge of Circuit Court](#), 77 Mich. 85, 43 N.W. 857 (1889).

<sup>2</sup> [§ 23](#).

<sup>3</sup> [Andres v. Judge of Circuit Court](#), 77 Mich. 85, 43 N.W. 857 (1889).

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## 58 Am. Jur. 2d Oath and Affirmation IV B Refs.

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#### West's Key Number Digest

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## 58 Am. Jur. 2d Oath and Affirmation § 20

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### Oath and Affirmation

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#### IV. Form and Sufficiency

##### B. Other Matters Affecting Validity of Oath or Affirmation

### § 20. Strict compliance with formalities, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

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[Sufficiency, under Rules 603 and 604 of Federal Rules of Evidence, of wording of oath, affirmation, or other declaration made by witness, or proposed witness or by court, relating to truthfulness of witness' testimony, 127 A.L.R. Fed. 207](#)

Generally, no particular formalities are required for there to be a valid oath<sup>1</sup> although compliance with certain essential elements is necessary.<sup>2</sup> While an oath may be taken upon the gospels or by swearing with uplifted hand,<sup>3</sup> it is well settled that the form in which an oath is administered does not affect its sufficiency for the purpose of basing thereon a charge of perjury<sup>4</sup> and that any form that appeals to the conscience of the person to whom it is administered and binds the person to speak the truth is sufficient.<sup>5</sup> On the other hand, the assertion of a statement as true in a manner that would not permit prosecution for perjury is not the making of a sworn statement under an oath.<sup>6</sup>

Statutes prescribing the form of an oath should not be interpreted in an overly technical manner,<sup>7</sup> and some latitude may be permitted by statutes as to the form in which a required oath or affirmation may be administered.<sup>8</sup> Such statutes are not intended to prescribe an inflexible iron formula, admitting of no deviation in words, but are intended rather to direct and point out the essential matters to be embraced in an oath,<sup>9</sup> and while it is the duty of the officers to follow the forms prescribed by law, and they should always do so, mere formalities are not, in cases of this kind, essential to the validity of the act, and if there is a substantial compliance with the statute, the oath is obligatory and binding.<sup>10</sup> Moreover, it has been said that inasmuch as the contemporary business world has spawned informality in the performance of ceremonial functions, some of which are vestiges of a more ritualistic era, the manifested intent with which an oath is executed weighs more heavily than the observance of punctiliousness in its ceremonial aspects.<sup>11</sup> In regard to children, it has been said that so long as the oath ceremony actually performed evinces a commitment by a child to tell the truth out of fear of future punishment of any kind, the child is properly sworn even if the court failed to administer a formal oath to the child.<sup>12</sup>

**Observations:**

It is provided by federal statute that whenever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person that is subscribed by him, as true under penalty of perjury, and dated, in substantially the form prescribed by the statute.<sup>13</sup> It must be noted, however, that although a wide scope is given to the form of an oath, some form remains essential.<sup>14</sup>

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**Footnotes**

- <sup>1</sup> U.S. v. Yoshida, 727 F.2d 822 (9th Cir. 1983).
- <sup>2</sup> §§ 16 to 19.
- <sup>3</sup> State v. Gay, 59 Minn. 6, 60 N.W. 676 (1894); O'Reilly v. People, 86 N.Y. 154, 1881 WL 12966 (1881).  
For a discussion of the form and sufficiency of the verification supporting an indictment or information, see Am. Jur. 2d, Indictments and Informations §§ 82, 83.
- <sup>4</sup> Rousseau v. Democratic Parish Executive Committee for Parish of St. Martin, 164 So. 175 (La. Ct. App. 1st Cir. 1935); Cincinnati Finance Co. v. First Discount Corp., 59 Ohio App. 131, 12 Ohio Op. 42, 27 Ohio L. Abs. 11, 17 N.E.2d 383 (1st Dist. Hamilton County 1938).
- <sup>5</sup> In re Rice, 35 Ill. App. 2d 79, 181 N.E.2d 742 (4th Dist. 1962); State v. Healy, 521 N.W.2d 47 (Minn. Ct. App. 1994); Atwood v. State, 146 Miss. 662, 111 So. 865, 51 A.L.R. 836 (1927); State v. Sands, 123 N.H. 570, 467 A.2d 202, 37 A.L.R.4th 904 (1983); O'Reilly v. People, 86 N.Y. 154, 1881 WL 12966 (1881); Blackburn v. Motor Vehicles Division, Dept. of Transp., 33 Or. App. 397, 576 P.2d 1267 (1978).
- <sup>6</sup> § 6.
- <sup>7</sup> State v. Sands, 123 N.H. 570, 467 A.2d 202, 37 A.L.R.4th 904 (1983); Blackburn v. Motor Vehicles Division, Dept. of Transp., 33 Or. App. 397, 576 P.2d 1267 (1978) (implicitly following rule in holding that statutory provision as to how oath "may" be administered cannot be read as "shall").
- <sup>8</sup> H. A. M. S. Co. v. Electrical Contractors of Alaska, Inc., 563 P.2d 258 (Alaska 1977), order supplemented, 566 P.2d 1012 (Alaska 1977).  
Oath administered to witness indicating defendant's name, crimes charged, and fact that testimony was being given in a trial and not grand jury proceeding was proper because oath was not materially different in both form and substance from prescribed statutory oath. Elam v. State, 211 Ga. App. 739, 440 S.E.2d 511 (1994).
- <sup>9</sup> Miller v. Palo Alto Bd. of Sup'rs, 248 Iowa 1132, 84 N.W.2d 38 (1957); State v. Mazon, 90 N.C. 676, 1884 WL 1900 (1884).
- <sup>10</sup> Preston v. State, 115 Tenn. 343, 90 S.W. 856 (1905).  
See also People v. Carreon, 151 Cal. App. 3d 559, 198 Cal. Rptr. 843 (5th Dist. 1984), noting that the California Legislature has committed California courts to a liberal policy when ruling on questions regarding formalities and oath taking.  
Substantial compliance with the prescribed statutory form of oath or affirmation is often sufficient. H. A. M. S. Co. v. Electrical Contractors of Alaska, Inc., 563 P.2d 258 (Alaska 1977), order supplemented, 566 P.2d 1012 (Alaska 1977).
- <sup>11</sup> People v. Walker, 247 Cal. App. 2d 554, 55 Cal. Rptr. 726 (3d Dist. 1967).

<sup>12</sup> State in Interest of R. R., 79 N.J. 97, 398 A.2d 76, 6 A.L.R.4th 140 (1979).

<sup>13</sup> 28 U.S.C.A. § 1746.

<sup>14</sup> State v. Healy, 521 N.W.2d 47 (Minn. Ct. App. 1994); Youngstown Steel Door Co. v. Kosydar, 33 Ohio App. 2d 277, 62 Ohio Op. 2d 420, 294 N.E.2d 676 (8th Dist. Cuyahoga County 1973).

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## 58 Am. Jur. 2d Oath and Affirmation § 21

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#### IV. Form and Sufficiency

##### B. Other Matters Affecting Validity of Oath or Affirmation

### § 21. Touching or kissing Bible

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#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

The touching<sup>1</sup> or kissing of the Bible or Testament is not essential to the taking of an oath.<sup>2</sup>

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#### Footnotes

<sup>1</sup> Cox v. State, 13 Ga. App. 687, 79 S.E. 909 (1913).

<sup>2</sup> Preston v. State, 115 Tenn. 343, 90 S.W. 856 (1905).

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## 58 Am. Jur. 2d Oath and Affirmation § 22

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#### B. Other Matters Affecting Validity of Oath or Affirmation

## § 22. Holding up hand

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### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5

The ceremony of holding up the hand is not essential to the validity of the oath of a witness,<sup>1</sup> the provision of the statute as to this form being merely directory.<sup>2</sup> Thus, a valid oath was held to have been properly administered to circulators of recall petitions who, despite a statutory provision requiring the uplifting of a hand as part of the oath ceremony, failed to do so.<sup>3</sup> There is, however, contrary authority where, pursuant to an express statute, the usual mode of administering an oath is by the person who swears holding up his or her right hand, failing which there is no formal valid oath.<sup>4</sup> Also, in the absence of an actual recitation that a required oath was made to God, or, "So help you God," it sufficed to require the affiant to uplift his hand and swear to the truthfulness of his statements.<sup>5</sup>

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### Footnotes

- <sup>1</sup> U.S. v. Troutman, 814 F.2d 1428, 22 Fed. R. Evid. Serv. 1020 (10th Cir. 1987); State v. Parker, 81 Idaho 51, 336 P.2d 318 (1959); Donkers v. Kovach, 277 Mich. App. 366, 745 N.W.2d 154 (2007); People v. Coles, 141 Misc. 2d 965, 535 N.Y.S.2d 897 (Sup 1988); Means v. State, 92 Tex. Crim. 323, 244 S.W. 149 (1922).
- <sup>2</sup> Atwood v. State, 146 Miss. 662, 111 So. 865, 51 A.L.R. 836 (1927); Blackburn v. Motor Vehicles Division, Dept. of Transp., 33 Or. App. 397, 576 P.2d 1267 (1978).
- <sup>3</sup> In re Rice, 35 Ill. App. 2d 79, 181 N.E.2d 742 (4th Dist. 1962).
- <sup>4</sup> Dawson v. Austin, 44 Mich. App. 390, 205 N.W.2d 299 (1973).
- <sup>5</sup> State v. Sands, 123 N.H. 570, 467 A.2d 202, 37 A.L.R.4th 904 (1983).

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## 58 Am. Jur. 2d Oath and Affirmation § 23

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#### IV. Form and Sufficiency

##### C. Presumption of Proper Administration

### § 23. Generally

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#### West's Key Number Digest

West's Key Number Digest, [Oath](#)  3, 5, 6

When an oath is administered by a public officer, it will be presumed, in the absence of direct evidence to the contrary, that the oath was taken properly and that the mode of administering it was accepted as valid by both the officer and the person taking the oath.<sup>1</sup> Thus, when a witness comes before a tribunal to be sworn, it is presumed that the witness has settled with him- or herself the manner in which the oath is to be administered, and it is generally held that the burden is on the witness to make known any preference as to the form of the oath and that if the witness fails to do so, an oath administered in any form recognized by law will be binding.<sup>2</sup> It will also be presumed that the officer administered the oath in the county within which he or she was authorized to administer oaths.<sup>3</sup>

The actual taking of an oath in the nature of a pledge may be shown by extrinsic evidence where it does not appear by a jurat that the oath was administered.<sup>4</sup>

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#### Footnotes

<sup>1</sup> [State v. Nicholson](#), 102 N.C. 465, 9 S.E. 545 (1889).

<sup>2</sup> [O'Reilly v. People](#), 86 N.Y. 154, 1881 WL 12966 (1881); [State v. Nicholson](#), 102 N.C. 465, 9 S.E. 545 (1889).  
Where a person affirms or declares and no objection is made at the time, it will be held that the person to whom the affirmation was administered preferred that form, and such affirmation, without objection, conclusively establishes the existence of conscientious scruples against taking an oath. [Bram v. U.S.](#), 168 U.S. 532, 18 S. Ct. 183, 42 L. Ed. 568 (1897).

<sup>3</sup> [Hertig v. People](#), 159 Ill. 237, 42 N.E. 879 (1896); [Teutonia Loan & Building Co. v. Turrell](#), 19 Ind. App. 469, 49 N.E. 852 (1898).

<sup>4</sup> [June v. School Dist. No. 11, Southfield Tp.](#), 283 Mich. 533, 278 N.W. 676, 116 A.L.R. 581 (1938).

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